

20

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

DENVER GOREE, #111992
Plaintiff-Appellant

V.

MICHIGAN PAROLE BOARD
Defendants-Appellees

Case:2:19-cv-10869
Judge: Drain, Gershwin A.
MJ: Davis, Stephanie Dawkins
Filed: 03-25-2019 At 02:42 PM
PRIS GOREE VS MICHIGAN PAROLE BOARD
(DP)

Michigan Department of Attorney General
Corrections Division
P.O. Box 30217
Lansing, Michigan 48909

Denver Goree, #111992
Plaintiff in pro. per
2500 S. Sheridan Drive
Muskegon Heights, Michigan 49444

42 U.S.C. § 1983

TABLE OF CONTENTS

Table of Contents.....	i
Index of Authorities.....	ii
Praecipe For Hearing.....	iii
Issue 1.....	1-4
Issue 2.....	5-6
Relief Requested.....	7

INDEX OF AUTHORTIES

Exhibit A Guidelines

Exhibit B Parole Board's Executive Session

Exhibit C Commutation Score Confirmed

Exhibit D Policy Directive PD-DWA-4512

Ex Post Facto Clause Const. 1963, Art 1 Sec. 10

Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 60 L.ed 668,
99 S. ct. 2100 (1979)

Michigan Const. 1963, Art 1, Sec. 17

Public Act of 1953, Amend in 1966, effective date July 11, 1966

United States Const. Amend 5

United States Const. Amend 6

United States Const. Amend 14

United States Ex Post Facto Clause Sec. 9 C13

Wilkinson v. Austin, 125 S.ct 2384 (2005)

Wilkinson v. Dotson, 544 U.S. 74 (2005)

Authorities:

MCLA 24.207 (K); 791.202, 791.204, 791.232, and 791.244.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

DENVER GOREE, #111992
Plaintiff-Appellant

V.

MICHIGAN PAROLE BOARD
Defendants-Appellees

U.S. District Court
Eastern District
No. _____

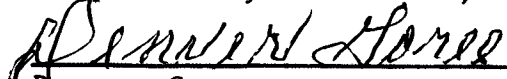
TO: The Court Clerk
United States District Court
Eastern District of Michigan
231 W. Lafayette Blvd.
Detroit, Michigan 48226

PRAECIPE FOR HEARING

Dear Clerk:

Please take Notice, that the enclosed material is comprised of a Civil Complaint. Please place this matter upon this Honorable Court's Calendar to be heard as the business of this Honorable Court will permit.

Respectfully Submitted,


Denver Goree

ISSUE 1

THE MICHIGAN PAROLE BOARD VIOLATED THE PLAINTIFF'S PAROLE PROCEDURES AND DENIED HIM OF A PROTECTED LIBERTY INTEREST THAT GOES CONTRARY TO THE DUE PROCESS CLAUSE OF THE MICHIGAN CONST. 1963, ART 1, SEC. 17 AND THE 5th 6th AND 14th AMENDMENT OF THE UNITED STATES CONSTITUTION, AND EQUAL PROTECTION UNDER THE LAW.

The 5th Amendment of the United States Constitution in part to wit:

....nor shall any person be deprived of life,
liberty or property without due process of law;

The Plaintiff asserts that he was deprived of a commutation process during a transitional period when the Michigan Parole Board was replaced by new members in 1992.

Prior to the change, on or about January of 1983, when the Plaintiff had served approximately fourteen (14) years. The Michigan Parole Board held an executive session and decided by a majority vote, under attest to release the Plaintiff after the service of twenty-two (22) years. (See exhibit B)

When the Plaintiff was granted a confirmed commutation score of twenty-two (22) years. (See exhibit C) The Parole Board had the authority and jurisdiction under Public Act of 1953, an amended in 1966, and the effected date took place on July 11, 1966 which is the statue that governs MCLA 791.204, which states in part to wit:

Sec. (4) subject to constitutional powers vested in the executive and judicial department of the state, the department shall have exclusive jurisdiction of the following (B) pardons, reprieves, commutations, and paroles.

The Policy Directive PD-DWA-4512 (See exhibit D) was implemented by the Michigan Parole Board and authorized by the statute because the parole board had exclusive jurisdiction to do so, which states in part to wit:

"The guidelines shall be the basis for the Boards decision to refer most cases to the Governor with a recommendation for commutation".

The parole board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind".

It is clear, that both statute and Policy are written under mandatory language, and where such language exists, a prisoner has a legitimate expectation of parole or "liberty interest" that cannot be denied without due process. Greenholtz v. Nebraska Penal Inmates, 442 U.S. at 11-12, U.S. 1, 60 L.ed 668, 99 S.ct 2100 (1979).

The Plaintiff contends that once he received a receipt from the chairman of the parole board that his commutation score was confirmed. (See exhibit C) That confirmation gave the Plaintiff a "protected liberty interest" in attaining release on parole. Greenholtz v. Nebraska. Supra.

In Wilkinson v. Austin, 125 S.ct 2384 (2005) The United States Supreme court held:

"A liberty interest protected by the Fourteenth Amendment Due Process Clause may arise from the constitution itself, by reason of guarantees implicit in the word "liberty" or it may arise from an expectation or interest created by the state laws or policies".

The Plaintiff would like to also emphasize that constitutional law 254.1 clearly states:

"Once the state imposes limitations on its own discretion and requires that a specific standard prevail for decision making it creates a liberty interest".

Moreover, the decision by the parole board to proceed with a recommendation for commutation was an entitlement because the statue was created by the legislators of the state, and implemented by state actors under mandatory language.

The Plaintiff would like to stress to this Honorable Court that if the promugated rules and procedures were violated in the statue that governs commutations. Then clearly the Plaintiff's Procedual Due Process were also violated by the parole board who failed to uphold the statue.

The Plaintiff is fully aware that he doesn't have a constitutional right to a parole.

But it is clear, that under the statute which was legal at the time it was committed, and written under mandatory language, and the decision to proceed with a recommendation for a commutation was made by the Michigan Parole Board who created the expectation of parole or "liberty interest" in the first place. Then clearly, the Plaintiff had a right to that process, but that process was abridge by the parole board.

In conclusion, it is well settle law that a prisoner is bound to the law in effect when the crime was committed. See Wilkinson v. Dotson, 544 U.S. 74 (2005).

Therefore, and for the above reasons, and the fact that the Michigan Parole Board violated clearly established law within their own statute that governs commutations. Then, they are responsible for depriving the Plaintiff's procedural Due Process, and a protected liberty interest that goes contrary to the Michigan Const. 1963, Art 1, sec. 17 and the 5th 6th, and 14th Amendment of the United States Constitution and equal protection under the law.

ISSUE 2

THE MICHIGAN PAROLE BOARD VIOLATED CLEARLY ESTABLISHED LAW SET FORTH IN THE EX POST FACTO CLAUSE BY IMPLEMENTING NEW RULES AND REGULATIONS TO PAROLE PROCEDURES THAT GOES CONTRARY TO BOTH MICHIGAN CONST. 1963, ART 1, SEC. 10, AND THE UNITED STATES CONST. SEC. 9 C13.

When the second parole board took office in 1992. They implemented a new policy that "Life Means Life" after the Plaintiff had completed the twenty-two (22) years that was requested by the previous parole board at their executive session.

The new rules and amendments by the second parole board violates the ex post facto clause where such change has caused the Plaintiff a significant risk of increased punishment.

The Plaintiff has now served a total of fifty (50) years after receiving multiple five (5) year flops starting from 1992 thru 2017 with no explanation other than "No Interest".

The Plaintiff firmly states that he has suffered a great deal of hardship after expecting a different outcome from his superiors. To be told that you're going home after the service of twenty-two years. Then you're still incarcerated after fifty years, goes beyond cruel and un-usual punishment.

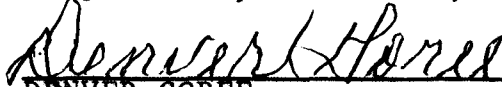
Now it appears that the Plaintiff is the subject of a "Double Standard" whereas, he is now expected to honor "Life Means Life" When in fact, the Policy he was previously under was disregarded, and in violation of the ex post facto clause, and equal protection under the law.

RELIEF REQUESTED

To Sue the Michigan Parole Board in their individual capacity in the amount of 1.5 million for violating the Plaintiff's Due Process under Wilkinson v. Dotson, 544 U.S. 74 (2005).

And to proceed with a recommendation for a commutation, or discharge the Plaintiff from custody, or whatever this Honorable Court deems appropriate.

Respectfully Submitted,


DENVER GOREE
#111992

MICHIGAN DEPARTMENT OF CORRECTIONS
COMMUTATION AND LONG TERM RELEASE GUIDELINES – HOMICIDE

CSO-452B

Prisoner's Name: Gorse, Denver No.: B 111992
 Scored by: C. Sprang Date: 12-26-81 Institution: SPSM-North
 Reviewed by Parole Board, Initials: _____ Date: _____

PRIOR CRIMINAL HISTORY SCORE

Juvenile History	Totals	Prior Prison Term	Totals
None =0		None =0	
A Juvenile Act which would be felony for Adult =2	<u>3</u>	One =2	<u>2</u>
Two or More such Acts =3		Two or More =3	
Adult Misdemeanors - Assaultive Only		Prior Adult Probation, CRP, or Parole Revocations	
Two or Less =0	<u>0</u>	None =0	<u>1</u>
Three or More =1		One or More =1	
Prior Jail Terms		On Probation, CRP Status, or Parole at Time of Instant Offense	
One or None =0	<u>0</u>	No =0	<u>1</u>
Two or Three =1		Yes =1	
Four or More =2			
Prior Felony Convictions		Total History Score (0 - 15)	8
None =0			
One =1			
Two =2	<u>1</u>		
Three or More =3			
If any of above involved Assaultive Behavior Add +1			

OFFENSE SEVERITY SCORE

Instant Offense Conviction	
Manslaughter =0	
Murder, Second Degree; Attempt Murder =2	<u>6</u>
Assault with Intent to Commit Murder.... =2	
Murder, First Degree =6	
Offender's Role	
Minor or Peripheral Role in Crime =0	<u>1</u>
Alone or Equal Partner =1	
Leader, Where two or more offenders =2	
Offender's Intention	
No Intent to Kill or Injure =0	<u>0</u>
Intent to Injure Only =2	
Intent to Kill =3	
Torture, Sexual Assault or Sadism Inflicted	
No =0	<u>0</u>
Yes =3	
Professional/Organized Crime, or Hired Killing	
No =0	<u>0</u>
Yes =4	
Number of Victims	
One =0	<u>0</u>
Two =2	
More than Two =3	
Victim Vulnerability	
Victim Not Unusually Vulnerable =0	<u>0</u>
Victim Unusually Vulnerable =2	
Total Offense Score (0 - 23)	7

TOTAL HISTORY SCORE

	0-2	3-5	6-10	11-15
0	6 years	7	8	9
1-3	8	10	13	16
4-5	10	16	18	20
6-9	14	18	22	25
10-12	18	22	27	30
13+	20	25	30	30+ years

Note: Exemplary institutional conduct will result in consideration one year earlier than shown above. A poor institutional record will prevent or delay consideration as indicated in Policy Directive DWA-45.12.

Term in Yrs. from Grid Above = 22Minimum Term Imposed by Court = LIFE

CHECK ONE:

☐ Grid Term is same or longer than court term so guidelines DO NOT apply.

☒ Grid Term is less than court term so guidelines DO apply (if case meets policy criteria).

MICHIGAN DEPARTMENT OF CORRECTIONS
PAROLE BOARD ACTION - EXECUTIVE SESSION

13-10-
Guidelines 23
CAO-125 Rev. 4/77

NUMBER B111992	NAME SMN Laree, Dennis	I-93	DATE 1-2-19
-------------------	---------------------------	------	----------------

THE PAROLE BOARD, sitting in Executive Session, has ordered the following action:

Interview
1-4-82

Discuss w/ file of Co-def
commutation
score confirmed need to confirm
or not confirm
I-94/-12-83 - 1/84 guidelines
Confirm Guidelines
22 yrs +

Special Instructions to Secretary:

ATTEST:

MEMBER
MEMBER
MEMBER
MEMBER
MEMBER
MEMBER
MEMBER

DISSENT:

MEMBER
MEMBER
MEMBER

EXECUTIVE SESSION

MICHIGAN DEPARTMENT OF CORRECTIONS - PAROLE BOARD/NOTICE OF ACTION

CAX-114 Rev. 9/76

NUMBER 8-111392	NAME (LAST) Goree, Denver	OFFENSE	PREV ACTION	CONSIDERATION DATE 2/15/83	LOCATION NONE
D.O.B.					
AGE:					
ACTION Commutation Score Confirmed	REASON CODE 24	TERM (MOS)	NEXT ACTION DATE 12/83	INSTRUCT.	OFFICIAL DATE 1/84

Actual release is subject to investigation and approval of the placement plan. Institutional misconduct could result in loss of parole.

Confirmed guideline score of 22 years.

BY Edward S. Turner, Chairman

BFS COMMENTS

PLACEMENT

INST.	ASSIGNED TO:	DATE	REPORT DUE
-------	--------------	------	------------

tion Codes:

SERVICE CONTINUED

- 17 Board denied low risk
- 18 Judge denied low risk
- 19 Tech. viol. sustained
- 20 Further demonstration
- 21 Sentence delimiting
- 22 Other programming
- 23 Other reasons
- 24 Other reasons
- 25 Other reasons
- 26 Other reasons
- 27 Other reasons
- 28 Other reasons
- 29 Other reasons
- 30 Other reasons
- 31 Other reasons

- 32 Chronic recidivist
- 33 Judge denied
- 34 Protect society
- 35 Board denied special
- 36 For improved record
- 37 Contract suspension
- 38 Rescind parole
- 39 Suspended parole

DISPOSITION DEFERRED

- 41 Insufficient info
- 42 Current psychiatric report
- 43 Current medical report
- 44 Supplemental report on min.
- 45 Information and study
- 46 Further discussion

- 47 Investigation
- 48 Satisfactory placement
- 52 Complete program

PAROLES & REINSTATEMENTS

- 60 Reinstatement
- 61 Regular parole
- 62 Parole in custody
- 63 Contract full minimum
- 64 Special parole
- 65 90 day early parole
- 66 Contract with the 90 days
- 67 Reparole on same term
- 68 Contract special parole
- 69 Low risk parole
- 76 Conditional parole

OTHER ACTION

- 80 Low risk interview
- 81 Spec. consideration interview
- 82 Reinstatement on contract
- 83 Contract interview
- 84 RGT recommended by Warden
- 85 Volunteer Contract Terminate
- 86 Not available for hearing
- 87 Continued at own request
- 88 Contract rejected (by resident at hearing)
- 89 Voluntary contract termination (job furlough)
- 90 Rehearing -- order sustained
- 91 Long indeterminate interview
- 92 Lifer law interview
- 93 Murder first interview

1 - RESIDENT, 2 - INSTITUTION, 3 - PAROLE BOARD, 4 - I.P.A., 5 - CLASS. COMM.



MICHIGAN DEPARTMENT OF CORRECTIONS

POLICY DIRECTIVE

EFFECTIVE DATE

NUMBER

12-14-87

PD-DWA-45.12

ACA STANDARDS

CSO-216 Rev. 2/78

SUBJECT

GUIDELINES FOR COMMUTATION RECOMMENDATIONS

PAGE 1 OF 3

SUPERSEDES: PD-DWA-45.11 FOR 1/8/87

APPLICATION: All prisoners serving Murder First Degree life sentences.

POLICY: Commutation is a form of clemency granted by the Governor where justice calls for mitigation of sentence. Such mitigation may be warranted because of a terminal or totally disabling and irreversible medical condition, or because of extraordinary accomplishment during incarceration.

Prisoners serving for Murder in the First Degree and certain drug law violations are denied the possibility of any consideration for special parole or "Lifer Law" release. Historically, commutation has been their only avenue of release. A decision to recommend commutation rests solely with the Parole Board.

The guideline shall be the basis for the Board's decision to refer most cases to the Governor with a recommendation for commutation. The final decision as to whether commutation shall be granted on each individual case rests solely with the Governor.

Cases Covered by the Guidelines:

The guidelines cover prisoners serving life for Murder in the First Degree. Prisoners serving mandatory life sentences not subject to parole for drug law violations MCLA 333.7401 and 7403 are not covered by these guidelines. Those prisoners will be considered for possible commutation referral on a case-by-case basis.

Each prisoner serving for Murder First Degree shall have his or her guideline score computed on the basis of the offense and prior criminal record. This score shall then be applied to the commutation grid to determine the number of years to be served before commutation may be recommended.

Exception From the Guideline:

In some cases, the circumstances of the offense or the prisoner's past history may be such that a recommendation for commutation based on the guideline will not be made, because the deep and lasting impact on the community is so great that release would shock the public conscience, or because these circumstances suggest to the Board at the time of review that the

DOCUMENT TYPE

EFFECTIVE DATE

NUMBER

PAGE

OF

POLICY DIRECTIVE

12-14-87

PD-DWA-45.12

2

3

offender may never be safely released. Where such cases occur, the Board will, on its first review of the guideline recommendations, give the prisoner a written statement to the effect that it does not expect to use these guidelines in making a recommendation in his or her case and will include the reasons.

Irreversible and totally disabling or terminal medical conditions may result in a recommendation of commutation in cases not yet eligible under the guideline when the Board determines that such release would not jeopardize the public safety and is in the best interest of all concerned.

Modification of Guideline Recommendations by Prison Behavior:

(1) Extremely serious or persistent misconduct shall disqualify a prisoner from consideration under this policy.

(2) There must have been no major misconduct guilty finding within one year of consideration for recommendation.

(3) If at any time during the sentence for which commutation is being considered the prisoner has been found guilty of an assaultive crime by a court of law or by an administrative hearing of an assaultive act which would be a felony if prosecuted, the Board will normally use the date of that act rather than the commitment date to initiate the time period prescribed in the guidelines.

Implementation: Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Procedures will be developed by the reception centers, the institutions, and the Parole Board for the scoring and review of cases.

Prisoners will be given copies of their score sheets as they are completed, but must be advised that these are subject to Parole Board review and to the modifications discussed in this policy.

Notification and Appeal:

By the effective date of this policy, the policy and the guideline score sheet and grid shall be published in the penal press of each facility or otherwise made available to all prisoners serving for First Degree Murder, this is done so they may be aware of their own probable status with respect to commutation recommendations.

DOCUMENT TYPE

EFFECTIVE DATE

NUMBER

PAGE

3

OF

3

POLICY DIRECTIVE

12-14-87

PD-DWA-45.12

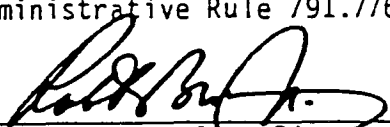
If any prisoner feels that his or her guideline score has not been correctly computed, he or she may request an administrative hearing under R 791.3310. Disagreement with the year values inserted in the cells of the guideline grids, or with the particular items or item weights shown on the guideline score sheets, is not a basis for review.

Revision of the Guideline:

The Parole Board may at any future time revise the guidelines or grid as it deems appropriate, but any prisoner who has already entered the system and received a recommendation date under one form of the guideline may not have that date delayed by any later revision of this kind.

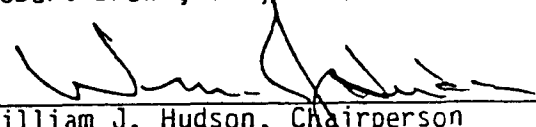
AUTHORITY: MCLA 24.207(k); 791.202, .204, .232, .244.
Administrative Rule 791.7760

APPROVED:


Robert Brown, Jr., Director

11-17-87

Date


William J. Hudson, Chairperson
Michigan Parole Board

11/10/87

Date

RB:gs

10/29/87

PREPARED BY: Marvin C. May, Administrative Assistant
Michigan Parole Board

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

DENVER GOREE, #111992
Plaintiff-Appellant

V.

MICHIGAN PAROLE BOARD
Defendants-Appellees

Case:2:19-cv-10869
Judge: Drain, Gershwin A.
MJ: Davis, Stephanie Dawkins
Filed: 03-25-2019 At 02:42 PM
PRIS GOREE VS MICHIGAN PAROLE BOARD
(DP)

State of Michigan)
County of Muskegon)

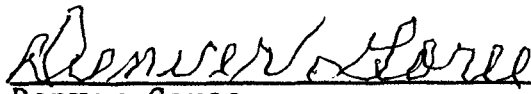
PROOF OF SERVICE

The undersigned affirms that on March 18th, 2019, copies of the Plaintiff-Appellant's Civil Action incorporated therein with Exhibits was served on the following persons, by placing same in the mail, first class postage fully prepaid, at the below address:

- 1 - original and 1 copy to - Office of the Clerk
United States District Court
Eastern District of Michigan
231 West Lafayette Blvd. Room 564
Detroit, Michigan 48226
- 1 - copy to - Michigan Department of Attorney General
Corrections Division
P.O. Box 30217
Lansing, Michigan 48909
- 10 - copies to- The Michigan Parole Board
Michigan Department of Corrections
P.O. Box 30003
Lansing, Michigan 48909

Under the penalty of perjury, I declare that the statements are true to the best of my information, knowledge and belief.

Date March 18th, 2019


Denver Goree
#111992
2500 S. Sheridan Drive
Muskegon Heights, Michigan
49444

Mr. Denver Goree
#111992
2500 S. Sheridan Drive
Muskegon Heights, Michigan
49444



RECEIVED
MAR 25 2019
U.S. DISTRICT COURT
CLERK'S OFFICE



To: The Court Clerk
United States District Court
Eastern District of Michigan
231 W. Lafayette Blvd.
Detroit, Michigan 48226

S. MARSHALL

CIVIL COVER SHEET FOR PRISONER CASES

Case No. <u>19-10869</u>		Judge: <u>Gershwin A. Drain</u>	Magistrate Judge: <u>Stephanie Dawkins Davis</u>
Name of 1st Listed Plaintiff/Petitioner: <u>Denver Goree</u>		Name of 1st Listed Defendant/Respondent: <u>Michigan Parole Board</u>	
Inmate Number: <u>111992</u>		Additional Information:	
Plaintiff/Petitioner's Attorney and Address Information:			
Correctional Facility: <u>Earnest C. Brooks Correctional Facility</u> <u>2500 S. Sheridan Drive</u> <u>Muskegon Heights, MI 49444</u> <u>MUSKEGON COUNTY</u>			

BASIS OF JURISDICTION

- ☐ 2 U.S. Government Defendant
☒ 3 Federal Question

ORIGIN

- ☒ 1 Original Proceeding
☐ 5 Transferred from Another District Court
☐ Other:

NATURE OF SUIT

- ☐ 530 Habeas Corpus
☐ 540 Mandamus
☒ 550 Civil Rights
☐ 555 Prison Conditions

FEE STATUS

- ☒ IFP *In Forma Pauperis*
☐ PD Paid

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____
Case No: _____
Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- ☐ Yes ☒ No

➤ If yes, give the following information:

Court: _____
Case No: _____
Judge: _____